

STATE OF MICHIGAN
COURT OF APPEALS

GRASS LAKE IMPROVEMENT BOARD,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,¹

Defendant-Appellee.

UNPUBLISHED
February 14, 2013

No. 306991
Oakland Circuit Court
LC No. 10-112854-CZ

Before: MURPHY, C.J., and DONOFRIO and GLEICHER, JJ.

MEMORANDUM.

Plaintiff Grass Lake Improvement Board filed a declaratory judgment action against defendant Department of Environmental Quality (DEQ) in Oakland Circuit Court, seeking various pronouncements that would allow it to increase the water level in Grass Lake without a permit. The circuit court dismissed the action for lack of subject matter jurisdiction because plaintiff had not exhausted its administrative remedies. As plaintiff was required to initially file a contested-case petition before the DEQ pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.*, and as plaintiff has done so and the administrative proceedings are now well under way, we affirm.

MCL 24.263 permits agencies to issue “declaratory ruling[s] as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency.” MCL 24.264 prohibits a plaintiff from proceeding in circuit court on such an action “unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously.”

Plaintiff correctly began its challenge by filing a contested-case petition before the DEQ. Plaintiff then misguidedly asked the agency to hold the petition in abeyance so it could bypass

¹ During the pendency of these proceedings, the Michigan Department of Natural Resources and Environment was divided into two separate departments. The designation of the defendant has therefore changed since the suit was initially filed.

the proper forum and file this declaratory judgment action. The circuit court sagely ruled that this matter had to be resolved first by the DEQ and granted the agency's motion for directed verdict.² Despite plaintiff's attempts to mischaracterize its claims as attacking the validity or propriety of a DEQ rule, plaintiff is actually challenging the DEQ's application of MCL 324.30102(d) and MCL 324.30304, as well as an internal "Guidance Document," to its request for a permit collateral to its water-level project and the DEQ's denial of that collateral permit based on its determination that increasing the lake level would harm adjacent wetland areas. Plaintiff is therefore required to first seek a declaratory ruling from the DEQ regarding the applicability of the statutes and guidance document to its proposed project and permit application. Plaintiff has actually done so and the DEQ is considering the matter. Pursuance of this appeal was therefore unnecessary.³

Affirmed. The DEQ, as the prevailing party, may tax costs. MCR 7.219.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher

² The DEQ should have raised its jurisdictional challenge at the summary disposition phase and saved valuable judicial resources.

³ As the lower court correctly determined that it lacked subject matter jurisdiction over plaintiff's claims, we need not reach the DEQ's alternative argument that plaintiff lacked standing to file suit in circuit court. We also decline to consider the merits of plaintiff's claim that it was entitled to summary disposition pursuant to MCR 2.116(C)(10) as the case should not have been placed before the circuit court in the first place.